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SUBJECT: CZECH REPUBLIC: POST INPUT 2009 SPECIAL 301 REVIEW

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[1](#)C. 08 PRAGUE 619
[1](#)D. SEPT 23 PRAGUE DAILY

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[1](#)1. (SBU) Over the past 12 month, Czech authorities have made significant progress on combating IPR violations. Customs and the Czech Trade Inspection Office (CTIO) have increased raids on, and presence at, the roughly 50 markets that dot the border with Germany and Austria. As a result, most pirated goods are no longer openly displayed but hidden and only available to select customers. In 2008, Customs and the CTIO confiscated almost 5 million pirated items with an estimated value of over 4 billion CZK (roughly USD 200 million). In January 2009, the parliament passed a new criminal code, which, when it goes into effect January 1, 2010, will significantly increase penalties for IPR violations. Problems, however, remain. Those arrested tend to be low-level vendors, rather than middle-men or organizers. Over 99 percent of those convicted receive only suspended sentences. Non-traditional enforcement tools such as the revocation of business licenses are rarely used. Internet piracy is also becoming a growing concern, despite significant police cooperation. Consequently, the Embassy recommends that the Czech Republic be kept on the Special 301 Watch List but be removed from the list, even as early as later this year, should the Czech authorities be able to demonstrate an increase in criminal penalties and business license revocations. End Summary.

Increased Raids at Border Markets Having a Visible Effect

[1](#)2. (SBU) Czech Customs officials adopted a much more organized approach in 2008 to combating IPR violations at the roughly 50 markets that dot the Czech borders with Germany and Austria. These markets are run by the large and tight-knit Czech Vietnamese community and cater almost exclusively to German and Austrian visitors. Since early 2008, Czech customs has targeted the markets for repeated raids. This is in stark contrast to previous years, when Customs symbolically visited only a few stalls and then left the area, Customs is now inspecting the entire market and leaving its people on site for several weeks.

[1](#)3. (SBU) Customs also reported that it is reaching out to market vendors to educate them on what items can be sold legally and what constitutes IPR piracy. After raids, written materials are often left behind warning both vendors and consumers. The Czech Ministry of Culture has separately participated and helped fund a number of IPR educational programs for domestic Czech consumers and students, often in cooperation with private stakeholders. At major Czech cinemas, an anti-piracy spot is shown before every movie

screened. Czech authorities are also planning at least three IPR conferences this spring, including one with French government support and another addressing IPR educational programs.

¶4. (U) According to Customs officials, in 2008, Customs confiscated (and subsequently destroyed) 4,843,360 counterfeit items, worth a total of 3.9 billion Czech crowns (CZK). The Czech Trade Inspection Office also confiscated an additional 129,955 items worth a total of 176 million CZK.

¶5. (SBU) While RIAA is recommending that the Czech Republic remain on the Special 301 Watch List and be elevated to the Priority Watch List if the Czech authorities do not take specific steps by the end of the year, the local IFPI director Petra Zikovska (who represents RIAA, please protect) told us bluntly that she disagrees with RIAA's report. She noted that Czech authorities have made a "visible difference" at the border markets. Unlike in the past, pirated goods are no longer visibly displayed and vendors who offer pirated goods are nervous and understand that what they are doing is illegal. Zikovska who in the fall was worried that Custom's increased raids may not be sustainable is now much less concerned. She noted that while Customs may not have had as many big flashy, publicized raids in the second half of 2008 as the first (as noted in the RIAA report), they continue to cooperate with IFPI on 5 to 7 smaller raids a week. Zikovska added that a Vietnamese owner of one of the market places is even selling his market as it is no longer such a profitable endeavor.

¶6. (SBU) Czech Anti Piracy Union head Marketa Prchalova, who
PRAGUE 00000113 002 OF 003

represents MPAA among other organizations, also told us that the increased activities of Czech Customs are having a positive effect. She thought that the scale and scope of items being sold at the outdoor markets is now much less, as most pirated goods are no longer openly displayed. Our own trips to several border markets in both August and November confirmed that most pirated goods are hidden in locked containers or are kept in sheds, cars or homes outside of the market (thus requiring customs to get a warrant to seize the goods). While pirated goods are still available, vendors are visibly nervous and carefully vet potential customers. In our experience, most pirated goods are generally offered only to customers who ask and fit the profile of German-speaking tourists.

Internet Piracy a Growing Problem; Police Cooperation
Excellent

¶7. (SBU) Anti Piracy Union head Prchalova told us she was much more concerned with internet piracy than the outdoor markets. While cooperation with the police is generally very good, internet pirates are becoming much more sophisticated and more adept at finding loop holes in current Czech legislation. For instance, websites cannot be held legally responsible for pirated content on other (often foreign) sites linked to the website. IFPI's Zikovska agreed that internet piracy is increasing but noted that her organization is very pleased with the cooperation it is receiving from the Czech authorities, especially the Police.

Less Progress on Criminal Enforcement, License Revocations

¶8. (SBU) While Customs has been successful in disrupting trade in pirated goods at the outdoor markets, Czech authorities do not appear to have made significant progress addressing the main concerns raised by USTR during a DVC in September between Washington and the Czech intergovernmental IPR task force. USTR's two main concerns were:

-- the lack of criminal enforcement; arrests are infrequent and violators generally receive only suspended sentences; and

-- the failure to use creative measures available under Czech law to combat IPR abuses such as revoking the business licenses of offenders.

¶9. (SBU) According to IFPI's Zikovska, during the average raid, the Vietnamese vendors run away as soon as their posted lookouts see the Czech authorities approaching. Thus, there is generally no one left to arrest. While the market operators are required to keep records of the stall owners, they are not held responsible for the accuracy of the reports. In practice, most of the addresses are out of date or false and it is very difficult for the authorities to track down violators.

¶10. (SBU) Czech customs and police do not have any Vietnamese agents and are not able to penetrate the tight-knit community. Consequently, those arrested tend to be low level vendors rather than organizers or kingpins. Czech judges tend to view IPR crimes as not particularly serious and IPR violators as not particularly dangerous. Thus judges are reluctant to send IPR pirates to the already overcrowded Czech jails or to impose significant fines. Thus, criminal penalties remain low. Of those convicted, almost all receive suspended sentences.

¶11. (SBU) According to official police statistics, in 2008, 274 people were prosecuted for trademark violations, 204 for copyright violations and 11 for industrial property rights violations (as compared to 220, 216 and 4 in 2007, and 229, 222, and 1 in 2006). Of the 489 people prosecuted, only 41 were repeat offenders. These statistics do not include information on the number of convictions or the level of penalties applied. These statistics also do not differentiate between those arrested for crimes at the border markets or elsewhere. (Note: The Ministry of Industry and Trade has rejected our suggestion to create a database to track the arrests and fines made at the border markets as too expensive and bureaucratic. End note.) According to the police, the statistics also do not include those arrested for petty offenses or cases in which criminal charges are dropped after the violators agree to provide financial compensation to the rights holder (a practice that is common in internet piracy cases).

¶12. (SBU) Czech officials are hopeful that the passage of the new criminal code in January will convince judges to

PRAGUE 00000113 003 OF 003

significantly increase the criminal penalties they apply. The new code, which will go into effect January 1, 2010, raises the maximum sentence allowed in IPR cases from two to 8 years imprisonment and significantly increases the maximum fine. Under the old code, those caught manufacturing or storing (but not selling) counterfeit items could only be charged with petty offenses. As of 2010, these offenses will now be regarded as serious crimes.

¶13. (SBU) Some Czech officials claim that while criminal penalties are low, the confiscation of goods and level of administrative penalties applied are making an impact and having some deterrent effect. While the increased confiscation of pirated goods may be having some deterrent effect, we have yet to see documentation supporting the contention that the level of administrative fines is now significant. According to government statistics, Customs reportedly levied fines of roughly 3 million CZK (roughly USD 150,000) in 2008. The CTIO did not have statistics on administrative fines available. The head of the Prague regional office told us he had fined one company the equivalent of USD 10,000 for selling two pirated shirts through the internet. This level, however, seems to be the exception rather than the rule.

¶14. (SBU) We have also seen no evidence that the Czech authorities have been using other more creative tools legally available to them to combat IPR crimes. Several Czech

officials have told us that IPR violators are not having their business licenses revoked. Customs told us it is informing the appropriate office in each case, but that as far as they are aware, no actions are being taken. Although very difficult to get approved, Czech law allows the police to confiscate property used in a crime or bought with funds generated from a crime. We are not aware that this tool has ever been used against IPR violators. The police also told us that they were considering using money laundering laws as another way to combat IPR offenses. We have not seen any evidence, however, that this is yet occurring.

Post Recommendation:

¶15. (SBU) Since first being listed in January 2008, Czech authorities have significantly increased the scope and frequency of IPR raids and the amount of pirated goods confiscated. The impact on the border markets is visible. Most pirated goods are no longer publicly displayed and have become harder to purchase. This is a significant achievement and should be acknowledged. Czech authorities have made less progress, however, meeting the concerns raised by USTR in September. Criminal penalties remain light, although there is some hope that these will increase once the new criminal code takes affect. We will work with USPTO to organize a seminar for Czech judges later this year. Czech authorities also do not appear to be using all the tools available in their arsenal such as revoking the business licenses of offenders.

¶16. (SBU) Thus, post recommends that the Czech Republic be kept on the Special 301 Watch List but that the report acknowledge the significant increase in raids and confiscations (while noting concerns about the lack of criminal enforcement and the full use of available legal tools). We believe that to not acknowledge Czech progress would hurt the credibility of the report and lessen its ability to affect change. We also recommend that the Czech Republic be removed from the list, even as early as later this year, should the Czech authorities be able to document an increase in criminal penalties and business license revocations.

Thompson-Jones